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THE GEO GROUP, INC., CAMPOS, and DIAZ

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

OMAR ARNOLDO RIVERA
MARTINEZ; ISAAC ANTONIO
LOPEZ CASTILLO; JOSUE
VLADIMIR CORTEZ DIAZ; JOSUE
MATEO LEMUS CAMPOS;
MARVIN JOSUE GRANDE
RODRIGUEZ; ALEXANDER
ANTONIO BURGOS MEJIA; LUIS
PENA GARCIA; JULIO CESAR
BARAHONA CORNEJO, as
individuals,

Plaintiffs,

v.

THE GEO GROUP, Inc., a Florida
corporation; the CITY OF
ADELANTO, a municipal entity; GEO
LIEUTENANT DIAZ, sued in her
individual capacity; GEO
SERGEANT CAMPOS, sued in his
individual capacity; SARAH JONES,
sued in her individual capacity; THE
UNITED STATES OF AMERICA;
CORRECT CARE SOLUTIONS,
INC.; and DOES 1-10, individuals,

Defendants.

Case No. 5:18-cv-01125-SP

**DEFENDANTS THE GEO GROUP,
INC., CAMPOS, AND DIAZ
MEMORANDA OF CONTENTIONS
OF FACT AND LAW**

Pretrial Conference

Date: January 21, 2020

Time: 10:00 a.m.

Trial date: February 3, 2020

Time: 9:00 a.m.

Magistrate

Judge:

Honorable Sheri Pym

1 TO THE HONORABLE COURT, PLAINTIFFS, AND THEIR
2 ATTORNEYS OF RECORD:

3 Pursuant to Local Rule 16-4 and this Court's scheduling order (Doc. # 99),
4 Defendants THE GEO GROUP, INC. ("GEO"), CAMPOS, and DIAZ
5 ("Defendants") hereby submit their Memoranda of Contentions of Fact and Law.

6 **I. INTRODUCTION**

7 On June 12, 2017, Plaintiffs (eight (8) civil detainees who were detained at
8 the Facility) engaged in what they believe was the start of a hunger strike (however,
9 it is unclear whether any GEO personnel understood their intent) in the dayroom of
10 their dorm. Plaintiffs chose to participate in the strike during a critical period of
11 time at the Facility that required all detainees to be at their bunks (count). If count is
12 not completed within a specified time period, the entire Facility is placed in an
13 emergency state. Despite numerous commands to return to their bunks, and
14 warnings that OC spray may be used to compel their compliance, Plaintiffs refused
15 to listen and instead remained in the dayroom to bring attention to their gripes.
16 Their noncompliance not only caused a major disruption in the dorm, but it
17 threatened to disrupt the entire Facility as they were delaying count. As a result of
18 their noncompliance and the major disturbance that resulted from their conduct,
19 employees of GEO, Lt. Diaz and Sgt. Campos, deployed short bursts of OC spray
20 (3 in total).

21 **II. CLAIMS AND DEFENSES.**

22 Plaintiffs' claims are as follows:

23 Claim 1: Defendants Campos and Diaz battered Plaintiffs during the incident,
24 and GEO is vicariously liable for the alleged battery.

25 Claim 2: Defendants Campos and Diaz assaulted Plaintiffs during the
26 incident, and GEO is vicariously liable for the alleged assault.

27 Claim 3: GEO negligently trained and supervised its employees regarding the
28 use of force policy and the temperature of the water that should be used during

1 decontamination.

2 Claim 4: Defendants Campos and Diaz intentionally inflicted emotional
3 distress on Plaintiffs by using force against Plaintiffs, and GEO is vicariously
4 liable.

5 Claim 8: Defendants Campos and Diaz violated Govt. Code § 52.1 by acting
6 in a reckless disregard of Plaintiffs' constitutional rights when using force, and
7 GEO is vicariously liable.

8 Claim 10: Defendants Campos and Diaz were negligent in the use of force
9 and in ensuring Plaintiffs were provided timely medical assistance, and GEO is
10 vicariously liable.

11 **Elements Required To Establish Plaintiffs' Claims 1 And Two For State Law**
12 **Assault And Battery Involving A Peace Officer:**

- 13 1. That defendant intentionally touched plaintiff;
- 14 2. That defendant used unreasonable force to overcome their resistance
15 and quell the major disturbance that Plaintiffs created;
- 16 3. That plaintiff did not consent to the use of that force;
- 17 4. That plaintiff was harmed; and
- 18 5. That defendant's use of unreasonable force was a substantial factor in
19 causing plaintiff's harm.

20 *See* California Civil Jury Instructions (CACI) 1305; *Brown v. Ransweiler*, 171 Cal.
21 App. 4th 516, 526-27, 89 Cal. Rptr. 3d 801 (2009) ("A state law battery claim is a
22 counterpart to a federal claim of excessive use of force. In both, a plaintiff must prove
23 that the peace officer's use of force was unreasonable."); *Edson v. City of Anaheim*,
24 63 Cal. App. 4th 1269, 1272, 74 Cal. Rptr. 2d 614 (1988) (holding an assault claim
25 brought against a police officer, a plaintiff must demonstrate that the officer's use of
26 force was unreasonable); *see also Saraceni v. City of Roseville*, 2003 WL 21363458,
27 at *8 (Cal. Ct. App. June 13, 2003) (holding that plaintiff's assault and battery claims
28 against an officer failed as a matter of law because the officer used reasonable force).

1 Defendants will introduce the following evidence in defense against these
2 claims:

3 In June 2017, Plaintiffs were housed at the Facility. While at the Facility,
4 Plaintiffs became aware that there were multiple times throughout the day when
5 they *had* to return to their bunks to be counted by GEO staff, and that it was a direct
6 order to return to their bunks for count. This procedure is referred to as “count” and
7 it is a critical time period at the Facility because it is the mechanism by which the
8 Facility is able to determine whether a detainee has escaped from the Facility.
9 Plaintiffs also understood that failing to comply with orders would result in
10 consequences.

11 On June 12, 2017, at around 6:22 a.m., Plaintiffs engaged in a strike and
12 refused to return to their bunks for count, which resulted in Lt. Diaz, GEO officers,
13 and RN Jones responding to their dorm. Lt. Diaz, Officer Reyes, and Officer
14 Martinez tried to negotiate and reason with Plaintiffs, but Plaintiffs refused to return
15 to their bunks. Plaintiffs understood that there would be consequences, including
16 the use of OC spray, for their decision to ignore the commands; however, they
17 admitted that they no intention of complying with the commands unless force was
18 used as this would help them garner more attention for their strike.

19 After giving numerous commands, four officers (including Officers Gillon,
20 Reyes, and Martinez) removed Plaintiffs Martinez and Rodriguez from Table A by
21 pulling them by their arms. No force (*e.g.*, strikes, kicks, punches, etc.) was used to
22 remove Plaintiffs Martinez and Rodriguez from the dorm despite their active
23 resistance; instead, the officers physically pulled them away from the table and then
24 apart after they clung to each other, as demonstrated by the video recording.

25 While the officers were escorting out Plaintiffs Martinez and Rodriguez,
26 Plaintiffs Cornejo, Castillo, Mejia, Diaz, and Campos (seated at Table B)
27 interlocked their arms and tethered their feet around the legs of Table B to make it
28 more difficult for the officers to remove them from the table – *i.e.* Plaintiffs were

1 actively resisting – and Plaintiff Garcia moved from Table A to Table B and sat
2 next to Plaintiff Campos. The dorm, during a period that is supposed to be very
3 quiet, was in an uproar and completely out of control.

4 After evaluating the situation, and in reliance on her training and experience,
5 Lt. Diaz determined it was appropriate to deploy OC spray after trying to de-
6 escalate the situation for more than 9 minutes, giving several warning that she
7 planned to use OC spray, which Plaintiffs understood, and GEO officers
8 unsuccessfully trying to pull plaintiffs away from the tables. Lt. Diaz deployed an
9 extremely short burst of OC spray down the middle of Table B. This was the only
10 force used by Diaz. Plaintiffs Diaz, Campos, Garcia, Cornejo, Castillo, and Mejia
11 were unfazed by the short burst of spray as they continued to remain seated at Table
12 B with their arms interlocked and their heads down on the table.

13 At 6:43:47, Officers Reyes and Martinez removed Plaintiff Garcia from the
14 table without using any force; they merely pulled Plaintiff Garcia by his arms from
15 the table, despite his active resistance, and untangled his arms from the plaintiffs
16 that he had interlocked his arms with.

17 Meanwhile, Lt. Diaz realized the situation was completely out of control
18 (Plaintiffs were interlocking arms and refusing to comply, and the other detainees
19 were yelling and acting in a rowdy manner), so she called for additional assistance.

20 Next, at 6:45:58, officers attempted to pull Plaintiff Mejia from the table by
21 unlinking his arms from Plaintiff Castillo. Despite Plaintiff Mejia resisting, the
22 officers were able to remove Plaintiff Mejia from the table at 6:46:18 without using
23 any force.

24 As the officers were trying to walk Plaintiff Mejia out of the dorm, Sgt.
25 Campos responded to Lt. Diaz's call and entered the dorm. Sgt. Campos
26 immediately assisted two officers, including Officer Martinez, that were struggling
27 to remove Plaintiff Mejia, who was being combative. Sgt. Campos guided the
28 group to the wall so the officers could secure Plaintiff Mejia's arms and escort

1 Plaintiff Mejia out without injury.

2 While Sgt. Campos assisted the officers with Plaintiff Mejia, three officers
3 were able to pull Castillo away from the table without using any force. (Sgt.
4 Campos then walked toward Table B, where officers were struggling to grab
5 Plaintiffs Diaz, Campos, and Cornejo's arms to separate them (the remaining
6 plaintiffs still had their arms interlocked). Plaintiffs Diaz, Campos, and Cornejo
7 grabbed on to each other to prevent the officers from gaining their compliance. In
8 turn, the officers struggled to separate them.

9 Sgt. Campos determined that any further delay in bringing this situation
10 under control would result in a major disturbance and further serious disorder
11 within the dorm; thus, it was reasonable under the circumstances to deploy OC
12 spray. He instructed the officers to move away from the table, yelled, "OC spray
13 warning," and commanded the plaintiffs at the table to stop resisting. Sgt. Campos
14 deployed a one second burst of OC spray in the direction of Plaintiffs Diaz,
15 Campos, and Cornejo, who had their arms interlocked and were huddled together
16 across the table. Then he moved to the opposite end of the table and deployed a
17 second extremely short burst of OC spray towards Plaintiffs Diaz and Campos. The
18 use of OC spray was the only force used by Sgt. Campos.

19 Sgt. Campos and Lt. Diaz had no further contact with Plaintiffs.

20 Thereafter, Plaintiffs were decontaminated and seen by medical staff.

21 **Elements Required to Establish Plaintiffs' Claim 3 for Negligent Training And**
22 **Supervision (Third Claim Against GEO Only)**

- 23 1. That GEO hired Defendant Diaz/Campos.
- 24 2. That Diaz/Campos became unfit or incompetent to perform the work
25 for which he or she was hired;
- 26 3. That GEO knew or should have known that Defendant Diaz/ Campos
27 became unfit and/or incompetent and that this unfitness or incompetence created a
28 particular risk to others;

1 4. That Defendant Diaz/ Campos's unfitness or incompetence harmed
2 Plaintiffs; and

3 5. That GEO's negligence in supervising Defendant Diaz/ Campos was a
4 substantial factor in causing Plaintiffs' harm.

5 Generally, Defendants will introduce the following evidence in defense
6 against this claim:

7 Defendants Campos and Diaz were competent to perform the functions of
8 their jobs and GEO did not have notice otherwise.

9 Additionally, the evidence demonstrates that Campos and Diaz were trained
10 by GEO to adequately perform the functions of their jobs. For example, when an
11 officer is initially hired, he/she must complete pre-service training, which consists
12 of 136-hours of training on various policies and procedures in a classroom setting.
13 Thereafter, officers are required to complete 40 hours of on-the-job training.
14 Annually, officers are required to complete 40-hours of in-service training.

15 Prior to being promoted to a supervisory position, which Campos and Diaz
16 were both in at the time of the incident, an officer is required to complete additional
17 training that builds on the pre-service training. The additional training includes
18 training specific to the use chemical agents (e.g. pepper spray or OC spray) and
19 covers topics such as the use of force requirements that permit the use of chemical
20 agents, the decontamination process, and the effects of chemical agents on the
21 person. Thereafter, supervisors are required to complete monthly training on
22 various topics (e.g. completing evaluations and use of force report writing).

23 GEO teaches its officers to only use force as a last alternative after all other
24 reasonable efforts to resolve the situation have failed. Officers are trained to on the
25 "Use-of-Force Continuum," which is a model used to illustrate the levels of force
26 staff may use to gain control of a detainee. The levels that are relevant to the
27 Facility are as follows: (a) staff presence without action; (b) verbal commands; (c)
28 soft techniques (techniques from which there is minimal chance of injury; e.g.,

1 grasping, empty-hand, "come-along" holds, using impact weapons for holds,
 2 pressure to pressure points, chemical agents); and (d) hard techniques (techniques
 3 where there is a greater possibility of injury; e.g., "take-downs" or striking using
 4 impact weapons, such as deploying chemical agents, expandable batons, straight
 5 batons, authorized less-lethal devices, and specialty impact weapons).

6 The use of chemical agents is authorized to control or quell a disturbance that
 7 is likely to develop into a serious disorder.

8 Additionally, a detainee that has come into contact with a chemical agent will
 9 be decontaminated/cleaned as soon as reasonably possible by flushing the
 10 contaminated area with generous amounts of water for 5 to 10 minutes or until the
 11 irritation is gone. This can be done in a shower, for example. Thereafter, the
 12 detainee is examined by the medical unit that is staffed by a third party contractor.

13 **Elements Required to Establish Plaintiffs' Claim 4 for Intentional Infliction of**
 14 **Emotional Distress (IIED) And Defendants' Affirmative Defense**

15 The elements for a claim of IIED are (1) extreme and outrageous conduct by
 16 the defendant with the intent of causing, or reckless disregard of the probability of
 17 causing, emotional distress; (2) the plaintiff suffering severe emotional distress; and
 18 (3) actual and proximate causation. *Hughes v. Pair*, 46 Cal. 4th 1035, 1050 (2009).

19 "Outrageous conduct" is conduct so extreme that it goes beyond all possible
 20 bounds of decency. Conduct is outrageous if a reasonable person would regard the
 21 conduct as intolerable in a civilized community. Outrageous conduct does not
 22 include trivialities such as indignities, annoyances, hurt feelings, or bad manners
 23 that a reasonable person is expected to endure. CACI 1602.

24 Additionally, Defendants Campos and Diaz acted with reckless disregard in
 25 causing Plaintiffs' emotional distress if (1) Campos/Diaz knew that emotional
 26 distress would probably result from his/her conduct; or (2) Campos/Diaz gave little
 27 or no thought to the probable effects of his/her conduct. CACI 1603.

1 As to Defendants' affirmative defense, Defendants Campos and Diaz claim
 2 that they are not responsible for any plaintiffs harm, if any, because their conduct
 3 was permissible. To succeed, Defendants Campos and Diaz must prove all of the
 4 following:

5 1. That defendant was exercising his/her legal right to restrain plaintiff
 6 for refusing to follow orders to return to his bunk for count;

7 2. That defendant's conduct was lawful and consistent with community
 8 standards; and

9 3. That defendant had a good-faith belief that he/she had a legal right to
 10 engage in the conduct.

11 Generally, Defendants will introduce the evidence discussed above under the
 12 elements required to establish Plaintiffs' first and second claims of assault and
 13 battery. Additionally, Defendants will introduce evidence of Plaintiffs' reports of
 14 non-injuries after the incident and subsequent medical records.

15 **Elements Required to Establish Plaintiffs' Claim 8 for Violation of California**
 16 **Civil Code Section 52.1**

17 Plaintiffs claim that Defendants Campos and Diaz intentionally interfered
 18 with their civil rights by threats, intimidation, or coercion. Namely, Plaintiffs claim
 19 that Defendants Campos and Diaz intentionally interfered with their rights when
 20 Campos/Diaz used force against them in response to Plaintiffs'
 21 strike/demonstration related to their grievances. To establish this claim, Plaintiffs
 22 must prove all of the following:

23 1. That Campos/Diaz caused acted violently against plaintiff for having
 24 exercised his right to grieve the conditions of their detention.

25 2. That Campos/Diaz intended to deprive plaintiff of his enjoyment of the
 26 interests protected by the right;

27 3. That plaintiff was harmed; and

28 4. That defendant's conduct was a substantial factor in causing plaintiff's

1 harm.

2 Generally, Defendants will introduce the evidence discussed above under the
3 elements required to establish Plaintiffs' first and second claims of assault and
4 battery.

5 **Elements Required to Establish Plaintiffs' Claim 10 for Negligence**

6 "The elements of any negligence cause of action are duty, breach of duty,
7 proximate cause, and damages." *Peredia v. HR Mobile Servs., Inc.*, 25 Cal. App. 5th
8 680, 687, 236 Cal. Rptr. 3d 157 (2018); *see, e.g., Clement v. Gomez*, 298 F.3d 898, 906
9 (9th Cir. 2002) ("clearly established that the officers could not intentionally deny or
10 delay access to medical care") (citation omitted).

11 As to Defendants' affirmative defense, Defendants Campos and Diaz claim
12 that they are not responsible for the plaintiffs harm because they was acting in
13 defense of another. To succeed, Defendants Campos and Diaz must prove both of
14 the following:

15 1. That Campos/Diaz reasonably believed that the plaintiff was going to harm
16 other officers; and

17 2. That Campos/Diaz used only the amount of force that was reasonably
18 necessary to protect the other officers present.

19 Generally, Defendants will introduce the evidence discussed above under the
20 elements required to establish Plaintiffs' first and second claims of assault and
21 battery. Additionally, Defendants will introduce evidence that medical care at the
22 Facility is provided by a third party contractor, which was Correct Care Solutions at
23 the time of the incident.

24 **III. EVIDENTIARY ISSUES**

25 Defendants are concurrently filing four motions *in limine*:

26 1. To exclude evidence or arguments of any alleged other bad acts of
27 Defendants;

28 2. To exclude evidence regarding Plaintiffs' alleged immigration

1 backgrounds, including the allegations within their operative complaint concerning
 2 the alleged reason(s) Plaintiffs left their home countries, their harrowing journeys
 3 from their home countries to the United States, their alleged status as asylum
 4 seekers, and their current immigration status;

5 3. To exclude evidence from or testimony related to media articles (from
 6 radio, television, newspapers and the internet) pertaining to (1) this federal civil
 7 rights action, (2) the incident that gives rise to the action, and/or (3) other unrelated
 8 incidents at Adelanto ICE Processing Detention Facility or that involve Defendants;
 9 and

10 4. To exclude the testimony of Plaintiffs' expert Dr. Homer Venters on
 11 the grounds that his testimony fails to satisfy the requirements established by
 12 Federal Rules of Evidence 702 and 703, which govern the admissibility of expert
 13 testimony, and it is cumulative of Plaintiffs' expert Jeffrey Schwartz.

14 **IV. ISSUES OF LAW.**

15 Apart from those issues identified elsewhere in this Memorandum (*i.e.* claims
 16 and defenses, and motions in limine), no other evidentiary issues are anticipated.
 17 The parties are generally in agreement on the law governing the claims and the
 18 disputes in this case are primarily factual.

19 **V. BIFURCATION OF PUNITIVE DAMAGES.**

20 Defendants request this trial be bifurcated as to punitive damages. The
 21 determination of punitive damages, if necessary, should be tried in the second
 22 phase, after liability has been determined, to avoid unnecessary testimony and
 23 evidence regarding finances and net worth.

24 **VI. JURY TRIAL.**

25 Defendants timely demanded a jury trial. This is estimated to be a 7 day trial.

26 **VII. ATTORNEYS' FEES.**

27 Plaintiffs will seek attorney's fees under California Civil Code § 52.1 if they
 28 prevail on any of this claim.

1 **VIII. ABANDONMENT OF ISSUES.**

2 Plaintiffs voluntarily dismissed as a defendant GEO employee Duran and
3 their ninth claim for conspiracy under U.S. C. Section 1985 against Defendants.

4 Additionally, Plaintiffs voluntarily dismissed defendants Corrective Care
5 Solutions and its employee, Sarah Jones, and the Court dismissed Plaintiffs' claims
6 against the USA on May 1, 2019.

7 The Court summarily adjudicated Plaintiffs' fifth claim for retaliation under
8 the First Amendment/Section 1983, sixth claim for excessive force, and seventh
9 claim for violation of due process rights under Section 1983. The Court also
10 summarily adjudicated all claims against the City of Adelanto.

11 No claims or other defendants have been dismissed.

12 **IX. DEFENDANTS' WITNESS LIST**

13 Defendants will file a Witness List in a separate pleading.

14 **X. DEFENDANTS' EXHIBIT LIST**

15 The parties will file a Joint Exhibit List in a separate pleading.

16 Dated: January 14, 2020

BURKE, WILLIAMS & SORESENSEN, LLP

18 By: /s/ Carmen M. Aguado

19 Susan E. Coleman
20 Carmen M. Aguado

21 Attorneys for Defendants
22 THE GEO GROUP, INC., CAMPOS, and
23 DIAZ